Fed. 444. And this view is thought to be supported by the generally accepted theory that if there is an insurable interest when the policy is taken out, its continuance is not necessary. See *Mutual Life Insurance Co.* v. *Allen*, 138 Mass. 24. Even these jurisdictions, however, would probably declare invalid an assignment of a policy to one without interest made so soon after the issuance of the policy as to evidence an intent to circumvent the requirement as to insurable interest on the part of the assured. *Steinback* v. *Diepenbrock*, 158 N. Y. 24. Logically, it would seem that the grounds of public policy requiring an insurable interest to support a life policy, are equally present whenever the policy is assigned. *Warnock* v. *Davis*, 104 U. S. 775. It is on this ground that a few courts hold an assignment to one without insurable interest absolutely void, or, as in the principal case, allow the assignee to recover no more than actual reimbursement. *Missouri Valley Life Insurance Co.* v. *Sturges*, 18 Kan. 93; *Culver* v. *Guyer*, 129 Ala. 602.

INSURANCE — NATURE AND INCIDENTS OF INSURANCE CONTRACTS — ASSIGNABILITY OF CASH SURRENDER VALUE. — A life-insurance policy was payable to the wife of the insured, but contained a provision that at the end of certain specified periods the insured might surrender it and receive its cash value. Shortly before the end of such a period the insured assigned the policy. The assignee demanded the cash value at the proper time, but at the instance of the insured the company refused to pay it. *Held*, that the power to collect the cash value is not assignable. *Moser* v. *Connecticut Mutual Life Insurance Co.*, 119 S. W. 792 (Ky.).

Where the wife of the insured is named as beneficiary, her interest in the policy cannot be defeated by its voluntary assignment to the insured's assignee in bankruptcy. See *Central Bank of Washington* v. *Hume*, 128 U. S. 195, 206. In Kentucky this exemption from a bankrupt's assets has been extended to a cash surrender value payable to the insured himself at his own option. *Townsend* v. *Townsend*, 127 Ky. 230. The main case applies the same principle to an assignment for consideration. The theory of the Kentucky court is that the right to surrender the policy for cash is a power which must be exercised by the insured in person. It is well settled that a power affecting another's interest, and involving confidence and discretion, cannot be delegated. *Ingram* v. *Ingram*, 2 Atk. 88. But where the only need for discretion is in deciding whether the power shall be executed, the appointment of another to carry it out has been sustained as amounting to an informal execution of the power. *Sergison* v. *Sealy*, 9 Mod. 390; *Crooke* v. *County of Kings*, 97 N. Y. 421. In the main case, the sole discretionary power of the insured appears to have been in deciding whether the policy should be surrendered, and the assignment was practically an exercise of that power. Accordingly it would seem that the assignee should have received the cash value.

INTERSTATE COMMERCE — CONTROL BY STATES — REQUIREMENT TO FILE CERTIFICATES. — Suit was brought in Kansas upon a note given to an Illinois corporation, for goods shipped from Illinois into Kansas pursuant to an order taken by a drummer in the latter state. A Kansas statute forbade any foreign corporation doing business in the state, from maintaining an action without having obtained a certificate that certain statements had been filed. *Held*, that the statute is not unconstitutional. *Wilson-Moline Buggy Co.* v. *Hawkins*, 101 Pac. 1009 (Kan.).

Any attempt by a state legislature to interfere with the sale of articles within the state by a foreign corporation, is unconstitutional as an interference with interstate commerce. *Robbins* v. *Shelby County Taxing District*, 120 U. S. 489. The question of such interference frequently arises under the common statutory requirement that a corporation, "doing business" within the state, must have an authorized agent therein, and must file certain certificates. Such a transaction as that in the principal case is usually held not to be "doing business" under the statute. *Cooper Mf'g Co.* v. *Ferguson*, 113 U. S. 727. But if the statute does apply to such a transaction, it has been held unconstitutional. *Murphy Varnish*

Co. v. *Cornell*, 10 N. Y. Misc. 553. See *Mearshon* v. *Lumber Co.*, 187 Pa. St. 12. *Contra*, *Western Paper Bag Co.* v. *Johnson*, 38 S. W. 364 (Tex. Civ. App.). The attempted distinction in the principal case that the requirement was merely a condition precedent to maintaining an action in the state courts, and not a regulation of interstate commerce, seems unsound. *Bateman* v. *Western Star Milling Co.*, 1 Tex. Civ. App. 90; *Murphy Varnish Co.* v. *Cornell*, *supra*. For to prevent an action for the purchase price in a sale of this character, merely because the foreign corporation has not fulfilled the statutory requirement, is surely a potent hindrance on interstate commerce.

JUDGMENT — COLLATERAL ATTACK — ATTACK BY SUIT TO QUIET TITLE. — By a divorce decree, title to land was declared to be in the husband. The wife brought suit to have title to the land quieted in her as against the husband and a *bona fide* purchaser from him, alleging that the decree was based on a stipulation obtained by fraud and duress, and was subsequently altered. *Held*, that the suit is a direct attack on the decree. *Kwentsky* v. *Sirovy*, 121 N. W. 27 (Ia.).

An attack on a judgment is collateral, in contradistinction to direct, unless the proceeding is expressly adapted and instituted to annul or modify the decree *Morrill* v. *Morrill*, 20 Or. 96. If the proceeding has an independent purpose the attack is collateral, although the modification of the judgment is a prerequisite to the end sought. *Lovitt* v. *Russell*, 138 Mo. 474. *Cf. Homer* v. *Fish*, 1 Pick. (Mass.) 435. Maintaining that under liberal code procedure, the courts should give the parties every relief to which the stated facts entitle them, regardless of the form in which the facts may be presented, some jurisdictions have held that a suit brought expressly to set aside a decree fraudulently obtained is not a collateral attack thereon, even though asking for further relief in the matter of title. *Noble* v. *Aune*, 50 Wash. 73. And in a proceeding to revive a judgment, the defendant's answer attacking it has been held to be direct. *Waterman* v. *Bash*, 46 Wash. 212. *Contra*, *Friedman* v. *Shamblin*, 117 Ala. 454. The principal case is not an extreme application of a doctrine which considers as direct any attack raised by the pleadings, thus accomplishing liberality in procedure at the expense of stability of judgments.

LANDLORD AND TENANT — CONDITIONS AND COVENANTS IN LEASES — ACTION BY LANDLORD DURING TERM. — After breach of the tenant's covenant to repair the landlord made the repairs, and during the term sued for the cost thereof. *Held*, that since the landlord has failed to show damage to the reversion, he cannot recover. *Wechsler* v. *Gude Co.*, 117 N. Y. Supp. 1037 (Sup. Ct.).

In England in such cases, the measure of damages is usually the diminution in the value of the reversion. *Doe* v. *Rowlands*, 9 C. & P. 734. But where this test is not practicable, the landlord has been awarded the cost of repairing. *Davies* v. *Underwood*, 2 H. & N. 570. In this country, this latter criterion has always been applied. *Schiefelin* v. *Carpenter*, 15 Wend. (N. Y.) 400; *Buck* v. *Pike*, 27 Vt. 529. In the principal case the court gives no reason for departing from the authorities, basing its decision entirely on a *dictum* in a recent case. See *Appleton* v. *Marx*, 191 N. Y. 81. The theory adopted is that the only damages recoverable during the term are for injuries to the reversion; while in an action brought after expiration of the lease, the measure of damages is the cost of repairing. This doctrine places the landlord in a dilemma when the tenant breaks his covenant to repair. Either he must permit the premises to deteriorate in order to show damage to the reversion; or if he repairs, he must wait for reimbursement till the lease expires. The decision seems indefensible, both on principle and on authority.

LEGACIES AND DEVISES — PARTICULAR INSTANCES OF CONSTRUCTION — IMPOSSIBILITY OF PERFORMANCE OF CONDITION SUBSEQUENT. — A testatrix bequeathed money to a church, to be used in building a Sunday school on a stipulated site. In condemnation proceedings by the county to get the proposed site,